

**STANDARDS AND PROCEDURES**

**RELATED TO APPOINTMENTS OF**

**ATTORNEYS AD LITEM**

**GUARDIANS AD LITEM**

**AND**

**MEDIATORS**

**FOR THE**

**412<sup>TH</sup> DISTRICT COURT**

**BRAZORIA COUNTY, TEXAS**

**DATED JANUARY 1, 2016**

**STANDARDS AND PROCEDURES RELATED TO APPOINTMENTS FOR  
ATTORNEYS AD LITEM, GUARDIANS AD LITEM, AND MEDIATORS  
FOR THE 412<sup>TH</sup> DISTRICT COURT, BRAZORIA COUNTY, TEXAS**

**To implement the provisions of Government Code 37.001(a)  
to be effective from January 1, 2016**

**RULE 1     **APPLICABILITY****

The rules in this Part will govern civil procedures in the 412<sup>th</sup> District Court, Brazoria County, Texas (the Court) for the appointment of Ad Litem, Guardians, and Mediators.

**RULE 2     **TERMINOLOGY****

In these Standards and Procedures, the singular includes the plural and the masculine includes the feminine as the situation requires.

The term “Court Coordinator” shall mean the Court Coordinator for the Court.

The term “Sanctioned” shall mean disbarment, probation, public reprimand, suspended, or such other State Bar of Texas sanction that is of Public Record.

**RULE 3     **SELECTION AND APPOINTMENT****

**3.1.     *Method of Appointment***

Attorneys Ad Litem, Guardians Ad Litem, and Mediators shall be appointed from a Master List using a system of rotation. A separate Master List shall be kept for Attorneys Ad Litem, Guardians Ad Litem, and Mediators.

**3.2.     *Appointment Lists***

The Court will establish the Master List from which appointments will be made.

**3.3.     *Qualifications to Receive Court Appointments as Attorneys Ad Litem, Guardians Ad Litem, and Mediators***

(a) *Basic Requirements:*

- If the person is an attorney he must be a member in good standing of the State Bar of Texas for the continuous 5 years immediately preceding the date an application, or reapplication, is made;
- If the person is an attorney he must be a member in good standing of the Brazoria County Bar Association; provided however that if a person who is on the Master

List fails to timely pay dues for the coming year, the person will not receive further appointments until the dues are paid, and if they are not paid within 3 months the person will be removed;

- A person of good moral character, and;
- Complete a combined minimum of 10 hours of certified C.L.E. credits annually in personal injury law, real estate law; trust, heirship or fiduciary duty law; civil trial law; business or employment law; or mediation. No self-study hours will be counted. Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirement for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum 10 hour requirement for such period may be applied to the following period's requirement up to a maximum of the 10 hours. The carryover provision applies to one year only. Completion of the required 10 hours will be certified to the Court Coordinator's office on or before the 1<sup>st</sup> day of each December, beginning December 1, 2016, by filing a sworn annual certification form with the Court Coordinator's office in the form required by the Court. The C.L.E. requirement does not apply to Mediators unless the Mediator is otherwise required by law to have a minimum of 10 hours C.L.E. or its equivalent.

(b) *Specific Requirements*

1. **PERSONAL INJURY CASES**

Amount in controversy does not exceed \$25,000

Must have at least 5 years prior experience in personal injury litigation and served as lead counsel in at least 3 personal injury cases in preceding 10 years; or have tried to a verdict at least 1 personal injury case in preceding 10 years; or have served as an Attorney Ad Litem or Guardian Ad Litem in the Court for at least 2 times.

Amount in controversy exceeds \$25,000 but does not exceed \$100,000

Must have at least 8 years prior experience in personal injury litigation and served as lead counsel in at least 5 personal injury cases in preceding 10 years; or have tried to a verdict at least 3 personal injury cases in preceding 10 years; or have served as an Attorney Ad Litem or Guardian Ad Litem in the Court for at least 3 times.

Amount in controversy exceeds \$100,000

Must be Board Certified in Personal Injury Law; or have at least 10 years of prior experience in personal injury litigation and served as lead counsel in at least 7 personal injury cases; or have tried to a verdict at least 4 personal injury cases within the last 10 years; or have served as an Attorney Ad Litem or Guardian Ad Litem in the Court at least 5 times in the last 10 years.

2. REAL ESTATE INCLUDING FORECLOSURES, TRESPASS TO TRY TITLE, AND DECLARATORY JUDGMENTS INVOLVING REAL ESTATE.  
Must be Board Certified in Real Estate Law or been licensed to practice law continually for 15 years and have tried to a verdict at least 2 trials in preceding 15 years involving real estate issues or have served as an Attorney Ad Litem or Guardian Ad Litem in the Court at least 3 times in the last 10 years.
3. TRUST, HEIRSHIP OR ESTATE RELATED MATTERS  
Must be Board Certified in Probate, Trust or Estate Law, or have tried to a verdict in the preceding 10 years at least 2 cases involving Trust, Heirship or Estate issues, or have served as Attorney Ad Litem or Guardian Ad Litem in the Court at least 3 times in the last 10 years.
4. BUSINESS/EMPLOYMENT/GENERAL LITIGATION  
Must be Board Certified in Civil Trial Law or have tried to a verdict in the preceding 10 years at least 2 cases involving Business, Employment or General Litigation issues, or have served as Attorney Ad Litem or Guardian Ad Litem in the Court at least 3 times in the last 10 years.
5. MEDIATOR  
Must be a credentialed mediator approved by the Texas Mediator Credentialing Association (TMCA); or, subject to Court approval, a candidate for credentialed mediator; or have been appointed by the Court to serve as a mediator at least 5 times in the preceding 10 years; or is a Senior, Former, or Retired District Judge with at least 10 years' experience on the bench,

### **3.4. Requirements for Consideration of Appointment**

Only persons who make application will be considered for appointment. By submitting an application the person represents that he is, and at all times will remain, in compliance with all provisions of Government Code 37.001(a), **including, but not limited to the requirement that if the amount paid to a person in one month on one case exceeds \$1,000, the person shall file with the Court the total number of hours billed and the billed expenses.**

Notices are to be prominently posted outside the courtroom of the Court in the Brazoria County Courthouse informing interested attorneys to pick up an application form for copying from the Court Coordinator's office or they can obtain a copy from the Brazoria County website ([www.brazoria-county.com](http://www.brazoria-county.com)) under the 412th District Court.

Only those persons who have completed the application form and returned the completed application form to the Court Coordinator's office no later than December 1 of each year, shall be considered for appointment beginning January 1 of the following year; however, due to the time necessary to implement these requirements, applications for 2016 may be filed prior to February 15, 2016. The form for the application is attached hereto as Form 1.

Any person who, during a calendar year desires to be considered for appointment from the Master List, and who did not complete an application prior to December 1 of the prior calendar year may secure an application from the Court Coordinator and complete and return that application to the Court Coordinator. New applications will be submitted to the Court for consideration on or about the 15<sup>th</sup> day of June and December of each calendar year. If the application is approved, then that person's name will be added to the Master List.

Any attorney who is currently on the approved list for appointment of counsel and who feels that by experience and education he has become qualified to receive appointment for other areas for which he was previously not approved to handle, may make application to the Court Coordinator for a reevaluation of their qualifications and standing on the list. The application for reevaluation shall be considered on or about the 15<sup>th</sup> day of June and December of each calendar year.

Nothing herein shall limit the discretion of the Court to appoint counsel or a mediator in any case, except as provided by law.

### **3.5. *Responsibilities of Persons on the Master List***

*All persons applying for appointment as Attorney Ad Litem or Guardian Ad Litem must:*

- (a) Make every reasonable effort to contact their client, or their client's legal representative, and all other counsel not later than the 7<sup>th</sup> day after notification of appointment is received.
- (b) Maintain a phone which is either the attorney's personal cellular telephone with voicemail or answered by a receptionist or answering service from 8:00 a.m. until 12:00 noon and from 1:00 p.m. until 5:00 p.m., Monday through Friday (except for Brazoria County official holidays as designated by the Brazoria County Commissioner's Court) and which receptionist or answering service can promptly locate the attorney and notify said attorney of the appointment or hearing setting.
- (c) Maintain a fax number or e-mail address to which faxes or e-mail may be received 24 hours a day, 7 days a week. Any change in their notification numbers or e-mail address must be given in writing to the Court Coordinator's office for Brazoria County within 24 hours of any change.

*All persons applying for appointment on the Master List must:*

- (a) (1) Maintain primary residence in Brazoria County, Texas;
- (2) Maintain his principal office in Brazoria County, Texas; or be a full-time employee, associate, or partner of a partnership that has, as its sole purpose, the practice of law, or be a member of a Professional Corporation that satisfies the requirements as stated herein; or

(3) Have served as a guardian ad litem, attorney ad litem or mediator for the Court at least 3 times in the 10 years preceding the date of appointment, or be a Senior, Former, or Retired District Judge, having served at least 10 years prior to taking Senior, Former, or Retired status.

(b) Submit only a properly documented and accurate statement as to the total compensation received from the appointment; the source of the compensation; and, if the total amount paid to a person in one case is in excess of \$1,000 in any month, the number of hours billed for the work performed; and the billed expenses.

#### **RULE 4 DUTIES OF COURT COORDINATOR**

##### **4.1. *The duties of the Court Coordinator shall include:***

(a) Maintain and update the list of qualified persons on the Master List and investigate and track attorney qualifications;

(b) Maintain the rotation schedule of all persons on the Master List;

(c) Notify the Court of any non-compliance with the policies and standards contained herein;

(d) File or cause to be filed all reports required by Gov. Code 37.001(a);

##### **4.2. *Assignment***

The following method shall be used to assign persons from the Master List:

(a) The Court will make all appointments but may delegate the responsibility to the Court Coordinator.

(b) The Court or Court Coordinator will appoint the person whose name appears next in order on the Master List for the specific area for which an appointment is needed, unless:

(1) A person with whom the appointee will need to communicate does not understand English, in which case the person making the appointment will appoint the person who both appears next in order in the list and can communicate with the person in the person's language; or

(2) The person making the appointment exercises discretionary authority to appoint one of the persons whose name is among the next five names in order on the appropriate list; or

(3) In unusual circumstances, the person making the appointment enters a written finding of good cause on the record for appointing any qualified, willing attorney regardless of whether the person's name is among the first five names

on the appropriate list.

(c) Whenever a person is appointed out of order under Rule 37.001(a), the person who is appointed out of order will move to the last place in order on that list, and any attorney who was not appointed will remain at the top of the list until appointed or removed from the list.

## **RULE 5      REMOVAL OF PERSONS FROM THE MASTER LIST**

### **5.1      *Annual Review***

The Court will conduct an annual performance review of all persons on the Master List on or before March 1<sup>st</sup> of each year or as needed. The Court shall determine if the person will remain on the Master List.

### **5.2      *Removal and Reinstatement***

#### **(a)      *Grounds for Removal***

A person shall be removed from the Master List and from any case to which the person has been appointed for any of the following:

- (1)      the person is convicted or receives deferred adjudication for any felony, including controlled substance offenses;
- (2)      The person is convicted or receives deferred adjudication for any crime of moral turpitude;
- (3)      The person is under indictment, information, criminal complaint or other formal charge for a felony or crime of moral turpitude;
- (4)      The person intentionally misrepresents any information on an Application Form or on a report required to be filed with the Court Coordinator;
- (5)      The person fails to meet any of the Basic or Specific Requirements (3.3(a) and (b) or comply with the Responsibilities of persons on the Master List (3.5);
- (6)      An attorney is sanctioned by the State Bar of Texas; or
- (7)      For good cause at the discretion of the Court.

#### **(b)      *Reinstatement to the Master List***

An attorney who was removed from the Master List for non-completion of MCLE may be immediately reinstated by the Court upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the qualifications under the Plan.

A person who has been removed from the Master List for any other reason and who wishes to be reinstated must apply through the original application process. The person may reapply after the expiration of one year's removal.

In addition to the other requirements for application, the person shall include a written description of all measures taken by the person to correct the problem(s) for which the person was removed from the Master List.

**(c) Voluntary Removal from Master List**

A person may at any time request, in writing, a period of temporary voluntary removal from the Master List. At the end of any period of less than one year, upon written request, the person will be returned to the Master List if he or she otherwise remains qualified. If the period of voluntary removal exceeds one year, the person must reapply for appointments through the original application process. All requests are to be made to the Court Coordinator of the Court.

**These standards and procedures related to appointment for Attorneys Ad Litem, Guardians Ad Litem, and Mediators is APPROVED this 6<sup>th</sup> day of January 2016, to be effective from January 1, 2016.**

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**W. EDWIN DENMAN  
JUDGE, 412<sup>TH</sup> DISTRICT COURT**